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OFFICE OF PETITIONS

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| In re Application of | : | |
| Marc R. Hammerman et al. | : | |
| Application No. 09/472,662 | : | DECISION ON PETITION |
| Filed: December 27, 1999 | : | UNDER 37 C.F.R. §1.181(A) |
| Attorney Docket Number: A- | : | |
| 68752-1/RF | : | |
| Title: COMPOSITION AND METHOD | : | |
| FOR IMPROVING FUNCTION OF | : | |
| EMBRYONIC KIDNEY TRANSPLANTS | : | |

This is a decision on the petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on March 27, 2006.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 5, 2001, which set a shortened statutory period for reply of three (3) months. A response was received on October 9, 2001, bearing a certificate of mailing dated October 4, 2001, and filed in conjunction with a one-month extension of time. The fourth page of the response was not included with the submission, and consequently, a notice was sent on January 2, 2002, which set a one-month period for response. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on February 3, 2002. A notice of abandonment was mailed on December 16, 2005.

RELEVANT PORTIONS OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

37 C.F.R. §1.181(f) sets forth, *in toto*:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

ANALYSIS

37 C.F.R. §1.181(f) indicates that any petition submitted under this portion of the C.F.R. that is not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. The present petition was submitted over two months after the mailing of the notice of abandonment.

It is noted in passing that even if this petition were to be accepted as timely filed, it could not be granted. Petitioner has confirmed the receipt of the notice of January 2, 2002, and has asserted that "Applicant resubmitted the Response on January 14, 2002 via Facsimile Transmission¹."

¹ Petition, page 2.

Petitioner has not established that the response of January 14, 2002 was transmitted to the Office, pursuant to 37 C.F.R. §1.8(b). Petitioner has informed the Office of the previous transmission of the correspondence, however he has not supplied an additional copy of this previously transmitted correspondence and certificate.

Furthermore, without a copy of this previous transmission, the Office has no way of determining whether the attestation regarding the previous transmission has been made on a personal knowledge basis.

Finally, since it does not appear that Petitioner has supplied a copy of this transmission, even if the petition were to be granted, the file would still be incomplete since as of the mailing of this decision, page 4 of the specification has not been received.

Pursuant to the discussion above, the petition under 37 C.F.R. §1.181 must be **DISMISSED**.

CONCLUSION

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.181." This is not a final agency action within the meaning of 5 U.S.C 704.

Alternatively, Petitioner may wish to consider filing a petition under 37 C.F.R. §§1.137(a) and/or (b).

Any subsequent petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail², hand-delivery³, or facsimile⁴.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

3 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

4 (571) 273-8300- please note this is a central facsimile number.

this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.



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